

## Official Form 417A (12/15)

CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF  
NEW YORK

2017 MAR 10 P 3:41

*[Caption as in Form 416A, 416B, or 416D, as appropriate]*

**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): Eric Richmond

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

Plaintiff

Defendant

Other (describe) Affected Party/  
Party in interest

For appeals in a bankruptcy case and not in an adversary proceeding.

Debtor

Creditor

Trustee

Other (describe) Affected Party/  
Party in interest

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: 1-13-42125-cec Doc 196

2. State the date on which the judgment, order, or decree was entered: 02/02/17

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: P.B. #7, LLC Attorney: Glenn P. Warmuth  
2 Eighth Street  
Farmingville, NY 11738  
Phone: 631-732-2000

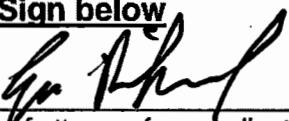
231 Fourth Avenue  
2. Party: Lyceum, LLC Attorney: David Blum  
11 Park Place 10th Fl  
New York, NY, 10007  
Office (212) 947-9416

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

**Part 5: Sign below**



Date: 03/09/2017

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

2107 Regent Place

Brooklyn, NY 11226

646 256 9613

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORKCLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF  
NEW YORK

## CIVIL COVER SHEET

2017 MAR 10 P 3:40

This form is REQUIRED for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

IN RE: Bankruptcy Case No. 13-42125(cec) Adv. Pro. No. (if applicable) \_\_\_\_\_**Bankruptcy Appeal**

## APPELLANTS

Eric Richmond,  
Movant, Affected Party

## APPELLEES

P.B. #7, LLC

## ATTORNEYS (FIRM NAME, ADDRESS, TEL. NO.)

Eric Richmond - Pro Se  
2107 Regent Place

## ATTORNEYS (IF KNOWN)

Glenn P. Warmuth  
Stim & Warmuth, P.C.  
2 Eighth Street  
Farmingville, NY 11738

## BASIS OF JURISDICTION: Federal Question

## CAUSE OF ACTION - 28:1334 Bankruptcy Appeal (Write brief statement of cause.)

Court misidentified movant,  
Court misidentified the basis of the motion,  
Court failed to address arguments cases and facts raised in motion

## NATURE OF SUIT: 422 Bankruptcy Appeal (801)

RELATED CASE(S) IN DISTRICT COURT, IF ANY

## DISTRICT JUDGE \_\_\_\_\_

## DOCKET NUMBER \_\_\_\_\_

## CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVED:

1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT  
 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION  
 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT COPYRIGHT OR TRADEMARK

Date: 03/09/2017Signature of Attorney of Record:  
[for Appellant Pro Se]

## FOR COURT USE ONLY

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

**CIVIL COVER SHEET, Bankruptcy Appeal (cont'd)**

Did the cause of action arise in Nassau or Suffolk County? NO

If YES, please indicate which county: \_\_\_\_\_

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I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

YES  NO

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

YES  (If yes, please explain) NO

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Please provide your bar code and e-mail address below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number, or any other four-digit number registered by the attorney with the Clerk of Court. This information must be provided pursuant to local rule 11.1(b) of the local civil rules.

Attorney Bar Code: PRO SE --

E-Mail Address: gowanusx@gmail.com

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
In re:

Chapter 11

231 Fourth Avenue Lyceum, LLC,

Case No. 13-42125-cec

Debtor.

-----x  
**ORDER DENYING THE DEBTOR'S MOTION**

**WHEREAS**, on February 2, 2017, 231 Fourth Avenue Lyceum, LLC (the "Debtor") filed a motion seeking to vacate a state court order (the "State Court Order") and for an open public hearing on judicial notice of undisputed facts (the "Motion"); and

**WHEREAS**, the Debtor is currently, and was at the time of the filing of the Motion, a limited liability company not represented by counsel; and

**WHEREAS**, a corporation, or limited liability company, must be represented by counsel (Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22-23 (2d Cir. 1983)); and

**WHEREAS**, the Debtor has requested that this Court vacate the State Court Order pursuant to Fed. R. Civ. P. 60(b)(4); and

**WHEREAS**, Fed. R. Civ. P. 60(b)(4) does not provide authority for this Court to vacate an order issued by another court; and

**WHEREAS**, this case was dismissed on September 5, 2014; and

**WHEREAS**, in order to consider the Motion it would be necessary to vacate the order dismissing this case (See In re Critical Care Support Servs., 236 B.R. 137, 140 (E.D.N.Y. 1999), see also Cole v. Household Financial, et al. (In re Cole), 382 B.R. 20, 24 (Bankr. E.D.N.Y. 2008)); and

**WHEREAS**, no grounds exist to vacate the order dismissing this case; and

**WHEREAS**, the property which was the subject of the State Court Order was sold on or about October 23, 2014, and is no longer property of the Debtor; and

**WHEREAS**, this matter is therefore moot;

**NOW, THEREFORE**, it is hereby

**ORDERED**, that, after due consideration, and for all of the above reasons, the Debtor's Motion is denied in its entirety; and it is further

**ORDERED**, that the hearing on the Motion that was scheduled for March 9, 2017 at 2:00 p.m. is marked off; and it is further

**ORDERED**, that the Court certifies pursuant to 28 U.S.C. § 1915(3) that any appeal from this order would not be taken in good faith.

**Dated: Brooklyn, New York**  
**February 6, 2017**



*Carla E. Craig*  
Carla E. Craig  
United States Bankruptcy Judge